

SUPREME COURT OF WISCONSIN
OFFICE OF LAWYER REGULATION

Public Reprimand With Consent

08-OLR-02

Patrick J. Hudec
Attorney at Law

FIRST MATTER

Attorney Patrick J. Hudec (“Hudec”), age 52, owns Hudec Law Office in East Troy. In 2000, a married couple hired Hudec to represent them in a medical malpractice case after a surgeon left a piece of surgical equipment inside the wife’s knee during an operation. Hudec’s associate filed the law suit in December, 2002. The associate handled the case until late June, 2003, at which time Hudec took over the case.

In late June, 2003, a defense attorney sent Hudec a discovery request that was due within 30 days. Hudec sent the discovery request to the female client and asked her to provide information. One month later, Hudec sent a follow-up request to the client. It is not known when, if at all, the client replied; however, Hudec did not submit a response to the discovery request until January 21, 2004, and after defense counsel sent two letters to Hudec, asking him to submit a response.

In January and February, 2004, Hudec failed to respond to the defense attorneys’ requests to depose the plaintiffs’ expert witnesses, which led to a defense attorney filing a motion to strike the plaintiffs’ expert witnesses and adjourn the June 1, 2004 trial date. At a hearing on March 18, 2004, the court set an April 1, 2004 deadline for the plaintiffs to produce liability experts for deposition and provide reports, and rescheduled the trial date to November 15, 2004. The court

ordered the plaintiffs to pay sanctions, which Hudec indicated he would pay. Hudec did not inform his clients of the sanction order. During the time period of March, 2004, Hudec told the court that he had some health issues but would not explain his situation.

On March 22, 2004, Hudec informed defense counsel that an expert witness's schedule prevented Hudec from complying with the April 1, 2004 deadline. On April 9, 2004, a defense attorney filed a new motion to strike the plaintiffs' liability experts and their testimony. At a hearing on April 28, 2004, the court set a May 28, 2004 deadline for the deposition of the plaintiffs' liability experts and gave the plaintiffs one week to resolve all outstanding discovery requests. Two of the plaintiffs' experts were deposed on June 1, 2004.

On September 10, 2004, the court rescheduled the November 15, 2004 trial to February 14, 2005, due to a defense attorney's scheduling conflict. A final pre-trial hearing was scheduled to occur on February 1, 2005. In mid-December, 2004, one of the plaintiffs' treating physicians was deposed, with Hudec's associate attending on the plaintiffs' behalf.

In December, 2004, Hudec wrote to the female client, expressing concern about proving damages that directly related to the surgeon's negligence and asking her to make an appointment. Sometime prior to January 25, 2005, Hudec met with the clients to prepare for a mediation session, and they agreed to seek a \$650,000.00 settlement. When Hudec was ill on the day of the mediation session, the plaintiffs opted to proceed with Hudec's associate; however, the mediation failed. Hudec's clients asserted that during this time period, Hudec never returned their calls.

On February 1, 2005, Hudec filed a motion to postpone the trial due to his ill health. The court considered Hudec's motion at the February 1, 2005 pre-trial hearing. Hudec's associate appeared for the plaintiffs. In a letter to the court, Hudec said he was filing the motion to give

the clients time to hire new counsel. Hudec copied the clients on the letter. Hudec informed the court that he would be unable to practice for at least two months; that he suffered from medical problems; and that he had been unable to work since December 15, 2004. Hudec also submitted a letter from his physician dated January 18, 2005, stating that he did not expect Hudec to be able to practice for approximately two months.

The court adjourned the February 14, 2005 trial date and gave the plaintiffs 60 days to hire new counsel. The court scheduled a status conference for April 8, 2005 and ordered that on April 8, 2005, the plaintiffs would tell the court whether they had hired new counsel, whether Hudec would be proceeding to trial, or whether the plaintiffs would be proceeding to trial *pro se*. The court ordered that if the plaintiffs were unable to proceed, either by themselves or with Hudec, the case would be dismissed on the merits, and costs would be assessed because of the plaintiffs' inaction. The court ordered that discovery was cut off on February 1, 2005. At the time of the February 1, 2005 hearing, Hudec had contacted a few other attorneys, but successor counsel had not been hired.

On February 16, 2005, the Court entered its order regarding the February 1, 2005 motion hearing. On February 24, 2005, Hudec's associate sent a copy of the order to the clients. There is no evidence relating to what, if anything, Hudec's office did to locate new counsel from February 2 to March 10, 2005. On March 10, 2005, Hudec's secretary told Hudec's associate that she and the associate had been given the task of locating successor counsel. Hudec's firm e-mailed many attorneys seeking counsel to take over the case. Beginning on March 17, 2005, Hudec's firm received responses from attorneys whom they had contacted, and Hudec's staff provided additional information to interested counsel.

On March 21, 2005, the female client called Hudec's office and left a message for Hudec and the associate, stating that she "had not heard anything from anyone regarding if we are going to have representation." The client said that she and her husband needed to know what was happening by the end of March. On March 24, 2005, Hudec's staff told the clients that Hudec would no longer represent them.

On March 30, 2005, the clients wrote to the judge in the matter and said that they were discovering that Hudec had not kept them informed. The clients said that Hudec's associate told them that Hudec's firm had sent out a mass e-mail the previous week, seeking successor counsel. The clients told the court, "We are at our wit's end because of the lack of guidance and communication we have received from the Hudec Law Firm."

The female client told OLR that on April 6–7, 2005, Hudec called her seven times and left messages. The female client told OLR that by then, she had lost all confidence in Hudec. The female client stated:

We went into that court house [on April 8, 2005] knowing we were possibly facing the fact that our case be thrown out and on top of that possibly face court costs from the defense. I do not trust Mr. Hudec. All we wanted him to do was to communicate to us. I heard more from him in a day and a half than I had in five years.

The female client said that it appeared that "at some point ... Hudec just stopped working on our case *and* communicating with us." The female client said that Hudec stopped answering her calls to his cell phone and would not return any of her calls and that it was not until the last couple of months in the law suit that Hudec's associate began assisting with the case and communicating with them. The female client believes that Hudec did not fulfill his duties and described the level of communication as "simply unacceptable." The female client stated that

the stress that Hudec's lack of communication had caused the clients was unforgivable. The female client further stated:

... [I]f Atty. Hudec would have just kept me in the loop and continued to work on my case, this would not be happening today. I was looking for direction from my attorney, or even just an occasional update would have sufficed. In the end, it doesn't seem like much to ask for.

The court gave Hudec's clients additional time to hire new counsel. The clients hired new counsel in mid-April, 2005. The case was settled in the autumn of 2005 with a settlement of less than \$5,000.00 to the plaintiffs.

Hudec acknowledged to OLR that his office failed to communicate with the clients and should have more actively pursued obtaining new counsel. Hudec told OLR that he was diagnosed with a medical condition in the autumn of 2003 and had been under a doctor's care since then. Hudec first believed that his medical problems were going to be temporary and that he would be able to work through them with the assistance of his staff. Hudec's health problems continued during 2004, and he began relying more on his staff.

Hudec told OLR that he reduced his case load and assigned the couple's medical malpractice case to an associate, although Hudec also worked on it on the days that he was able. Hudec said he did not know why his staff did not respond to the straightforward discovery requests in March and April, 2004. Hudec stated that his associate was performing the discovery in the case. Hudec told OLR that his associate was doing all of the communicating with the clients but Hudec could not say what communication his associate had with them regarding Hudec's illness. Hudec stated that the clients knew about his illness because they were personal friends as well as clients and that the clients would be told that Hudec was out of the office due to illness.

Hudec was out of the office with periods of illness during the summer of 2004, and his medical problems intensified during the last four months of 2004. Hudec was unable to work for a short period of time in November, 2004. In January, 2005, Hudec's doctor instructed him to take at least two months off work and have more tests. Hudec said that during this period, he directed his staff to handle his responsibilities, including withdrawing from some cases, and seeking successor counsel in cases where Hudec believed it was necessary. Hudec's health briefly improved in March, 2005, but his problems soon returned.

Hudec's firm's internal phone messages and office memos relating to the client's case, from the period of October 29, 2004 to April 21, 2005, include many messages from Hudec's associate to Hudec, updating him on events in the case. There were two messages from the associate to Hudec, asking him to return calls from the clients.

On April 11, 2005, OLR opened an investigative file relating to Hudec's representation of his clients. On June 2, 2005, OLR wrote to Hudec and asked him to provide additional information by June 16, 2005. Hudec did not reply to OLR's letter or to a follow-up letter.

On September 30, 2005, the Walworth County Circuit Court appointed a trustee attorney for Hudec's law practice pursuant to SCR 12.02, at Hudec's request, due to his health problems. The trustee was discharged in September, 2006.

On May 12, 2006, Hudec telephoned OLR and reported that his medical condition was much improved. As a result of a January 31, 2007 filing by Hudec in the Supreme Court, OLR learned that in approximately March, 2006, Hudec's doctor had given him clearance to return to the practice of law. OLR subsequently sent letters to Hudec on June 27, 2006, July 19, 2006, August 16, 2006, and September 20, 2006, asking him to respond to the questions set forth in OLR's letter dated June 2, 2005. While Hudec and/or his former staff contacted OLR after

receipt of some of the letters and indicated that Hudec's response would be forthcoming, Hudec did not submit the requested information.

On September 18, 2006, the Walworth County Circuit Court terminated the trustee's appointment. On November 28, 2006, Hudec wrote to OLR and reported that his ongoing health problems were causing him to forestall plans to return to the practice of law. Hudec said that his office had been closed for over a year and that a former employee visited the office weekly to process mail and requests for files. Hudec said that OLR's correspondence had been inadvertently set aside. However, Hudec did not subsequently submit the requested information.

On January 10, 2007, OLR filed a motion pursuant to SCR 22.03(4), seeking an order to show cause as to why Hudec's license should not be temporarily suspended for non-cooperation. The Supreme Court of Wisconsin issued an order to show cause.

On January 31, 2007, Hudec submitted a response to the order to show cause, alluding, in part, to his health problems and his previous lack of support staff, and requesting additional time to resolve matters with OLR. Hudec said that he again had a full-time secretary. Hudec said that OLR had asked him to submit documents from the case file; that the original file was returned to the client; and that Hudec would submit all copies that the trustee and Hudec's office possessed.

Between February 19, 2007 and March 12, 2007, OLR filed four reports with the Court, describing communications that occurred between OLR and Hudec during the period in which the order to show cause was pending. Hudec attributed failures by him during that time period to keep appointments with OLR and to submit information to OLR to his employee's illness, Hudec's sports-related injury, portions of the case file being missing, and computer problems.

On March 9, 2007, Hudec delivered documents to OLR. On March 12, 2007, OLR reported to the Court that Hudec had provided a response that was sufficient to allow OLR to continue its investigation. The Court dismissed the matter of the non-cooperation suspension.

Mr. Hudec apologized for the delay in responding to OLR's inquiries. Hudec attributed the delay to: (1) his health problems; (2) his having petitioned the circuit court for a trustee for his law practice; (3) the fact he was suspended for non-compliance with CLE; (4) until his financial problems compelled Hudec to regain his bar license, he was attempting to avoid the stress attendant to the practice of law and the extraordinarily adverse impacts that stress has had on his health and his life; and (5) his lack of computer skills needed to respond to OLR.

By failing to advance his clients' lawsuit, Mr. Hudec violated SCR 20:1.3, which states, "A lawyer shall act with reasonable diligence and promptness in representing a client."

By failing to keep his clients reasonably informed as to case status, including by failing to respond to numerous telephonic status inquiries from the female client, Hudec violated former SCR 20:1.4(a), effective prior to July 1, 2007, which states, "A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information."

Subsequent to receiving "clearance" from his doctor to return to his law practice in March 2006, by failing to timely respond to OLR's letters and telephone calls, and by failing to timely produce information requested by OLR, Mr. Hudec violated:

SCR 21.15(4), which states, "Every attorney shall cooperate with the office of lawyer regulation in the investigation, prosecution and disposition of grievances, complaints filed with or by the director, and petitions for reinstatement. An attorney's wilful failure to cooperate with the office of lawyer regulation constitutes violation of the rules of professional conduct for attorneys."

and SCR 22.03(6), which states, "In the course of the investigation, the respondent's wilful failure to provide relevant information, to answer questions

fully, or to furnish documents and the respondent's misrepresentation in a disclosure are misconduct, regardless of the merits of the matters asserted in the grievance."

SCR 21.15(4) and 22.03(6) are enforceable under the Rules of Professional Conduct via SCR 20:8.4(f), which states in part, "It is professional misconduct for a lawyer to... violate a... supreme court rule... regulating the conduct of lawyers."

SECOND MATTER

Subsequent to Hudec's filing a petition in Walworth County Circuit Court in September, 2005, for the appointment of a trustee for his law practice, OLR opened a separate investigative file on the matter of Hudec's capacity to practice law.

As noted in the First Matter, on May 12, 2006, Hudec informed OLR that he had "received clearance" from his doctor. In the OLR investigation regarding Hudec's capacity to practice law, on August 16, 2006, OLR sent a release form to Hudec and asked him to sign and return it, and to also provide additional information, all within seven days of his receipt of the letter. OLR's letter was sent to Hudec's home address, but Hudec did not respond. OLR's letter was not returned as undelivered. OLR subsequently called Hudec's home and office in late August and early September, 2006, but Hudec did not return messages.

Meanwhile, at a hearing in late September, 2006, the court dismissed the trustee of Hudec's law practice and closed the case.

On October 16, 2006, OLR sent a follow-up letter to Mr. Hudec at his residence by certified mail. Hudec signed the return receipt for the letter on October 19, 2006. OLR's letter asked Hudec to provide his response within seven days from his receipt of the letter, but Hudec did not reply within that time frame.

On October 31, 2006, OLR forwarded correspondence to a process serving company for service on Mr. Hudec. The letter informed Hudec that he was required to respond within seven days of service or face being subject to a motion brought under SCR 22.03(4), relating to the temporary suspension of his license for failing to cooperate. The correspondence was eventually served via substitute service on Hudec's wife on November 18, 2006.

Meanwhile, on November 1, 2006, OLR received a letter from Mr. Hudec enclosing the signed form and providing additional information. Hudec apologized for not sending the information earlier. OLR subsequently concluded that there was not sufficient evidence to believe that Hudec then had a medical incapacity as defined by SCR 22.001(8).

After Hudec informed OLR in May, 2006, that he had received clearance from his doctor, meaning his doctor had placed no restrictions on him relating to his health condition, Hudec failed to timely respond to letters from OLR requesting information or to return OLR's telephone calls between late August, 2006 and late October, 2006, contrary to SCR 21.15(4), as set forth previously, which is enforceable under the Rules of Professional Conduct via SCR 20:8.4(f).

In accordance with SCR 22.09(3), Attorney Patrick J. Hudec is hereby publicly reprimanded.

Dated this 27th day of March, 2008.

SUPREME COURT OF WISCONSIN

/s Richard Ninneman
Referee